

DOCKET NO. 97-239-C - ORDER NO. 2003-345

IN RE: Proceeding to Establish Guidelines for a) ORDER DENYING AND
Universal Service Fund.) DISMISSING PETITIONS
) FOR
) RECONSIDERATION
) AND/OR REHEARING

This matter comes before the Public Service Commission of South Carolina (the Commission) on two Petitions filed for reconsideration and/or rehearing of Order No. 2003-215. The first Petition is a Petition for Reconsideration of that Order by the Consumer Advocate for the State of South Carolina (the Consumer Advocate). The second Petition is a Petition for Rehearing or Reconsideration of that Order by AT&T Communications of the Southern States, LLC (AT&T), the Southeastern Competitive Carriers Association (SECCA), the South Carolina Cable Television Association (SCCTA), and MCI WorldCom Communications, Inc., and MCI WorldCom Network Services, Inc, (both known as MCI) (collectively known as the Joint Petitioners). In addition, Bluffton Telephone Company, Inc., Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Inc., Home Telephone Company, Inc., Horry Telephone Cooperative, Inc., and PBT Telecom (the 6 LECs) filed a Return to the Petitions. Because of the reasoning stated below, both Petitions are denied and dismissed.

With regard to the Consumer Advocate's Petition, the Consumer Advocate first asserts that in Order No. 2003-215, this Commission reaffirmed its findings from prior orders concerning the Universal Service Fund (USF). Further, this Commission noted in Order No. 2003-215 that those prior determinations have been affirmed by the Circuit Court, and that the Commission did not believe that it is appropriate to change its prior determinations with respect to those issues. The Consumer Advocate goes on to allege that the Companies' case in this phase of the USF proceeding suffers from the same legal infirmities as set forth in the Consumer Advocate's appeal of Commission Order Nos. 98-322, 2001-419, 2001-704, 2001-996, and 2001-1088, which is currently pending before the South Carolina Supreme Court. The Consumer Advocate then incorporates the legal arguments set forth in its Brief before the Supreme Court into its Petition by reference, including, but not limited to purported violations of S.C. Code Ann. Section 58-9-280(E), an alleged violation of 47 U.S.C. Section 254(k), and alleged violations of FCC Separations requirements set forth in 47 C.F.R. Part 36. We believe, as we have stated before, that these allegations are without merit, and hereby reaffirm all aspects of Order Nos. 98-322, 2001-419, 2001-704, 2001-996, and 2001-1088. We also note the Circuit Court affirmance of our decisions. Further, we reaffirm the contents of this Commission's arguments in our Joint Brief with the South Carolina Telephone Association in the same case, which, again, is presently before the South Carolina Supreme Court. This portion of the Consumer Advocate's Petition is therefore denied.

The Consumer Advocate also cites the portion of our Order No. 2003-215 which stated that the amount of funding requested by the 6 LECs in this case, when combined with the funding received from the first phase, does not exceed 1/3 of the company-

specific state USF for each respective company, and therefore, the 6 LECs are not required to update the results of their cost studies for basic local exchange service. According to the Consumer Advocate, this finding is not supported by the evidence in this case. The Consumer Advocate states that at no time, and in no prior order in this case has the Commission actually determined a total amount for the USF or any company-specific amount for the USF. Thus, the Consumer Advocate asserts that there is no way to determine whether the amounts requested by the LECs do not exceed 1/3 of the total, when there has been no determination as to what the total is. Further, the Consumer Advocate states that the Commission cannot assume that local rates today are not recovering their costs without up-to-date cost evidence and without looking at the Company's total financial results. We disagree.

As the Circuit Court concluded, the Commission acted properly in accordance with its statutory mandate, and in the public interest, in sizing and ordering implementation of the State Universal Service Fund. See Order of Judge James E. Kinard at 21, 43. The Commission sized the fund according to the statutory formula provided in S. C. Code Ann. Section 58-9-280(E). See Commission Order No. 2001-704 at 5, 9-10, Order of Judge Kinard at 20-24, TR of third USF proceeding at Vol. V, pp. 1188-90 (July 21, 2000), and Hearing Exhibit No. 11 in the third USF proceeding. The Commission determined the cost of providing basic local exchange service for each carrier of last resort, including the 6 LECs, and sized the fund based on the difference between the cost and the maximum amount each carrier of last resort could charge for the service. See Commission Order No. 98-322, Commission Order No. 2001-704 at 5, 9-10, Order of Judge Kinard at 20-24, TR of third USF proceeding at Vol. V, pp. 1188-90 (July 21,

2000), and Hearing Exhibit No. 11 in the third USF proceeding. Further, for South Carolina Telephone Coalition members, including the 6 LECs, embedded cost studies were run and the resulting maximum State USF amounts were presented. These amounts were used by the Commission to size the State USF. The State USF has been sized, according to the statutory formula, and this Commission properly determined that the amount of additional funding requested by each of the 6 LECs did not exceed 1/3 of that LEC's company-specific State USF amount.

As noted by 6 LECs' witness Emmanuel Staurulakis in the present proceeding, this Commission's Order No. 2001-419 limits the amount of funding that an eligible South Carolina incumbent local exchange carrier may withdraw from the South Carolina Universal Service Fund in the initial phase to no more than an amount equivalent to one-third (33.33%) of its company-specific South Carolina Universal Service Fund amount. Staurulakis noted that, for each of the six companies, the amount of funding per the first step (access reduction) of the initial phase when combined with the second (end user) step does not exceed the one-third limitation approved by the Commission. (Staurulakis testimony at 6).¹ Therefore, contrary to the allegations of the Consumer Advocate's Petition, there is no inconsistency with this Commission's prior Orders, and the Consumer Advocate's allegation and, indeed, its Petition is denied and dismissed.

Also filed with this Commission was a Petition for Rehearing or Reconsideration of Order No. 2003-215 by AT&T, SECCA, SCCTA, and MCI. These carriers likewise

¹ The initial phase of the State USF will implement up to 33% of the total state USF and will consist of two steps. The first step consists of a reduction in intrastate access rates and the second step consists of reductions in other rates providing implicit support for universal service. See Exhibit A to Order No. 2001-996, dated October 10, 2001 at 7.

challenge Commission Order No. 2003-215 on the same grounds as those contained in the appeal of the Commission's prior orders by two of the Joint Petitioners. The Joint Petitioners also raise issues in their Petition that were raised by the Consumer Advocate in the pending consolidated appeal before the South Carolina Supreme Court. Those matters have already been decided by this Commission, our Orders have been affirmed in all respects by the Circuit Court, and the Supreme Court will decide those issues upon review of the Circuit Court Order. However, we will discuss some of the Joint Petitioner's allegations herein.

The Joint Petitioners raise one of the same issues as asserted by the Consumer Advocate, that is, an issue related to the size of the fund and the Commission's finding that the amount of funding requested by the 6 LECs in this case does not exceed 1/3 of the company-specific State USF for each respective company. We have already addressed this issue above, and believe that the point should be addressed similarly herein in response to the Joint Petitioners Petition.

In paragraph 7 of their Petition, the Joint Petitioners argue that there is no evidence of the extent to which the rates to be reduced are providing implicit support for basic local exchange service. To the contrary, the Commission has sized the State USF based on the difference between the cost of providing basic local exchange service and the maximum amount that can be charged for such service. This defines the amount of support for basic local exchange service that is currently being derived from rates from other services offered by the carrier. The amount by which those other rates are priced above their respective cost is the amount of implicit support for basic local service built into those other rates. This contention of the Joint Petitioners is without merit.

In paragraphs 8 and 10 of the Petition, the Joint Petitioners raise a number of issues relating to the cost studies filed by the 6 LECs. These issues were considered by the Commission and addressed in paragraph 10 of Order No. 2003-215. The Joint Petitioners have raised nothing in their Petition that would require a different conclusion by this Commission.

Finally, in paragraph 9 of their Petition, the Joint Petitioners take issue with the Commission's findings relating to stimulation of demand. This Commission properly concluded that taking stimulation of demand into account would be a difficult task and is not likely to yield accurate results. Demand stimulation is hypothetical at best, and any stimulation of minutes of use would likely be accompanied by an increase in expenses to meet the demand. Although the Joint Petitioners have stated that the testimony on this issue was "patently incredible," we find otherwise. As pointed out by witnesses for the 6 LECs, the services sought to be reduced here are services that are faced with competitive alternatives. An example would be area calling plans, which provide a large amount of support for basic local service. With the large access rate reductions that have already taken place, these plans are no longer considered a bargain and, in many cases, may be priced higher than other alternatives, such as toll or wireless calling. TR at 25-26. Thus, there is a need to make the support in those rates explicit to ensure the continued availability of basic local exchange service at affordable rates. As testified to by witnesses for the 6 LECs, reducing rates for these services may or may not stimulate demand, depending on the nature of the calling plan and what other providers in the area are offering. TR at 92. For example, if toll rates are 5 cents a minute, it is questionable if someone would continue to subscribe to an area calling plan that was priced at 8 cents a

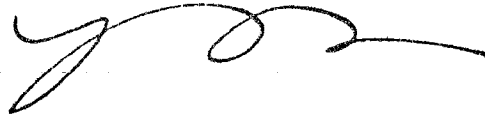
minute, even if the Company reduced the rate to 6 cents a minute. Further, the Joint Petitioners claim that only traffic-sensitive costs would increase. This follows only if all expenses are considered traffic-sensitive. Stimulation in demand for calling often results in the need for more facilities to handle the increased calling. Any significant increase in demand would necessarily increase expenses.

All remaining points in the Joint Petitioners' Petition have been addressed by this Commission in prior Orders and affirmed on appeal to the Circuit Court. Therefore we rely on our prior holdings in Orders such as those listed on page 2 of this Order, and the ruling of the Circuit Court on these issues, as well as on our arguments in our Joint Brief with the South Carolina Telephone Association. We will not repeat the discussions contained therein. Accordingly, the Petition of the Joint Petitioners is denied and dismissed.

In summary, both the Consumer Advocate's Petition and the Joint Petitioners' Petition are denied and dismissed.

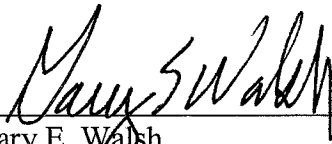
This Order shall remain in full force and effect until further Order of the
Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn
Chairman

ATTEST:



Gary E. Walsh
Executive Director

(SEAL)